

RECEIVED

11 - 5 1995

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re Applications of ) MM DOCKET NO. 93-135  
)  
THE PETROLEUM V. NASBY )  
CORPORATION ) File No. BRH-890601VB  
)  
For Renewal of License )  
of Station WSWR(FM), )  
Shelby, Ohio )  
)  
THE PETROLEUM V. NASBY )  
CORPORATION ) File Nos. BTCH-921019HX  
) and BTCH-921019HY  
)  
For Transfer of Control )  
of Station WSWR(FM), )  
Shelby, Ohio )

To: The Commission

DOCKET FILE COPY ORIGINAL

MASS MEDIA BUREAU'S  
APPLICATION FOR REVIEW

Preliminary Statement

1. The Mass Media Bureau, pursuant to Section 1.115 of the Commission's Rules, hereby requests Commission review of the Review Board's Decision, The Petroleum V. Nasby Corporation, FCC 95R-11 (1995) (hereinafter "Decision"). The Decision granted the application of The Petroleum V. Nasby Corporation ("Nasby") for renewal of license of Station WSWR(FM) and the applications of Nasby for transfer of control of the station. The Decision conditioned the grants upon the sale of ownership interests in Nasby held by the wife, children and parents of convicted felon, Thomas L. Root, and the resignation of Joanne Root, Thomas L. Root's mother, from her corporate positions in Nasby.<sup>1</sup> The

The Decision also imposed a \$4,000 forfeiture on Nasby for repeated violations of Section 310(d) of the Communications Act and Section 73.3540 of the Commission's Rules for unauthorized transfers of control. The Bureau does not seek

No. of Copies rec'd  
List A B C D E

0+14

Bureau submits that the Decision conflicts with Commission policy and that the Decision should have denied the Nasby renewal application. See Section 1.115(b)(5)(iv) of the Commission's Rules.

### **Question Presented**

Whether the Decision erred in determining that Nasby is qualified to remain a Commission licensee despite the criminal convictions of Nasby's principal, Thomas L. Root.

### **Discussion**

2. The material facts are not in dispute. During the license term under review, Thomas L. Root ("Root"), either individually or as custodian for his minor children, generally held some 34.5% of Nasby's outstanding stock.<sup>2</sup> Also, during the license term, Root was Nasby's general counsel and communications counsel, secretary, and one of its three directors. Root resigned from these corporate roles in March and April 1990, subsequent to the end of the license term. During his tenure as an officer and director of Nasby, Root attended, participated in and voted at corporate and shareholder meetings. He also assisted Nasby with the filing of ownership information and

---

review of this aspect of the Decision.

<sup>2</sup> For a brief period (May 30-31, 1989), Root held individually or as custodian 54.5% of Nasby's stock. Over the course of the next four weeks, he transferred 10% of his shares to the corporation as treasury shares and transferred all of his remaining holdings of stock to his wife, minor children and parents. Decision, at para. 23.

applications. Decision, at paras. 4, 7 and 8.

3. On October 26, 1990, Root pleaded no contest to North Carolina felony charges involving, inter alia, fraud in the sale of unregistered securities. On January 17, 1992, he was found guilty, after entering a guilty plea, of federal felony charges including the forging of public records and wire fraud. On June 23, 1992, he pleaded no contest to Florida felony charges, which included securities fraud. The federal convictions stemmed from misconduct which occurred during the course of Commission licensing proceedings, none of which involved Nasby. Decision, at paras. 5 and 6. The state convictions stemmed from Root's activities on behalf of Sonrise Management Services, Inc. See Abuses of Commission Processes by Broadcast Applicants, 4 FCC Rcd 6342 (1989). As the Decision correctly found at para. 17, Root's misconduct was willful, frequent, current and serious. Moreover, it was directly related to the Commission's licensing activities.

4. When the Nasby renewal application was filed, Root was the company's single largest shareholder, as well as an officer, director, and counsel. Throughout this proceeding, Root's immediate family, most of whose interests can be traced directly to stock transfers made by Root, have continued to own interests in Nasby. In addition, one of Nasby's directors and officers is Root's mother, who came to her roles upon the resignation of her son from those posts. Thus, for all intents, Root was and still

is an inherent part of Nasby, and Nasby seeks renewal with Root as a significant part of its identity.

5. In its Policy Regarding Character Qualifications in B/cast Licensing, 102 FCC 2d 1179 (1986), recon. granted in part, denied in part, 1 FCC Rcd 421 (1986), appeal dismissed sub nom. National Ass'n for Better B/casting v. FCC, No. 86-1179 (DC Cir. June 11, 1987) ("Character Policy Statement"), the Commission made clear that FCC-related criminal activity by an applicant for renewal is an important factor to be considered in determining whether the applicant's character entitles it to be entrusted with a license. In carrying out this policy equitably with regard to both corporate and non-corporate applicants, the Commission expressed its intention that only "the minimum necessary regard [be] given to the legal form in which they do business." Character Policy Statement, 102 FCC 2d at 1217. Thus, the Commission determined that "wrongdoing by corporate managers who are also controlling stockholders will be treated as though the individuals involved were sole proprietors or partners." 102 FCC 2d at 1218. "The Commission is [also] concerned with persons whose ownership interests are cognizable under the multiple ownership rules or who are in a position to potentially influence or control the operation of the station." Decision, at para. 16, citing Character Policy Statement, 102 FCC 2d at 1205-06.

6. Plainly, as the Decision recognized at para. 17, if Nasby was an individual applicant owned and controlled exclusively by Root, Root's criminal activities would require the denial of the application. In this regard, the nature of Root's convictions compels the conclusion that an applicant significantly influenced by Root can not be trusted or relied upon to follow the Commission's rules. Similarly, if Root is, either directly or through his family, "in a position to potentially influence or control the operation of the station" (Decision, at para. 16, citing Character Policy Statement, 102 FCC 2d at 1205-06), the Commission must deny Nasby's renewal application. The Commission can not find trustworthy or reliable an applicant that has Root, or family members who hold their stock through his maneuvering, as officers, directors and stockholders. Thus, lack of knowledge or involvement on the part of Nasby's other principals does not shield Nasby from the proper inferences to be drawn here, namely, that Root's criminal convictions cast grave doubt on Nasby's propensity both to tell the truth and to comply with the Commission's rules.

7. In an attempt to reach an equitable resolution, the Decision essentially ignores the applicable law. In West Jersey Broadcasting Co., 90 FCC 2d 363 (Rev. Bd. 1982) ("West Jersey"), the Review Board recognized that the Commission does not "atomize[] a licensee into its molecular elements for a gratuitous adjudication on the discrete qualifications of ...

individual shareholder[s]." West Jersey, 90 FCC 2d at 371. See also, Marr Broadcasting Company, Inc., 2 FCC Rcd 6596, 6597-98 (Rev. Bd. 1987); California Broadcasting Corp., 2 FCC Rcd 4175 (Rev. Bd. 1987). Then, contrary to the rationale of West Jersey, the Decision, in para. 23, proceeds to atomize Nasby, by observing that the other principals of Nasby had no knowledge or involvement with Root's criminal activities and that Root was not in control of the daily operation and management of the station. The Decision thus attempts to differentiate between guilty and innocent principals, and then proposes to restructure Nasby by removing the guilty. The Commission would not ordinarily allow such restructuring by a licensee and should not allow the Review Board to do so here.<sup>3</sup> To approve the Review Board's approach in this case would undermine the Commission's authority. Moreover, Nasby never sought such a restructuring. It has advocated from the outset that it is currently qualified for renewal of license, notwithstanding Root's family's continued involvement. Inasmuch as Nasby still includes and previously included Root in influential roles, the Commission must conclude that Nasby can not be relied upon or trusted. West Jersey can not be distinguished on the grounds that the misbehavior in that case was undertaken on behalf of the licensee, because the core decision was that the wrongdoing raised fatal doubts as to the corporation's reliability and trustworthiness. The nature and

---

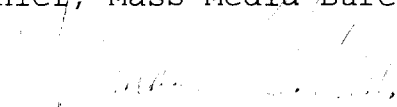
<sup>3</sup> Indeed, by not allowing restructuring, the Commission recognized that innocent shareholders can lose their investments. See Character Policy Statement, 102 FCC 2d at 1218 n. 93.


gravity of Root's wrongdoing and his role in Nasby also raise fatal doubts as to Nasby's reliability and trustworthiness.

8. Finally, the Decision is internally inconsistent. At para. 21, the Decision concludes that Root's criminal behavior does not fatally infect Nasby because other principals were unaware of Root's wrongdoing and Root did not exercise day-to-day control of the station. Nevertheless, at para. 24, the Decision conditions grant of Nasby's renewal application on the Root family's sale of Nasby stock to unrelated third parties and the resignation of Root's mother from her corporate posts. The Decision posits that "only a complete divestiture to unrelated third parties of the Root family holdings involved in the unauthorized transfers of control can provide the Commission with adequate assurance that the Commission will not again be subjected to public scrutiny to determine the potential impact of Mr. Root's presence." Decision, at para. 24. The Decision can not have it both ways. Either Root's actions did not fatally infect Nasby, or they did. Either Nasby is entitled to unconditional approval of its application, or its application must be denied. The Bureau submits that Root, through his criminal acts, has cast grave doubt on Nasby's propensity towards truthfulness and reliability. The appropriate response is to recognize that Root's actions and involvement have forfeited Nasby's right to continue as a licensee. Nasby's application must therefore be denied.

9. For the reasons set forth in the foregoing, the Bureau urges the Commission to grant review of the Review Board's Decision in the above-captioned proceeding and deny Nasby's renewal application for Station WSWR(FM).

Respectfully submitted,  
Roy J. Stewart  
Chief, Mass Media Bureau

  
Norman Goldstein  
Chief, Complaints and  
Investigations Branch

  
James W. Shook  
Attorney  
Mass Media Bureau

Federal Communications Commission  
2025 M Street N.W., Suite 8210  
Washington, D.C. 20554  
(202) 418-1430

July 5, 1995



**CERTIFICATE OF SERVICE**

Michelle C. Mebane, a secretary in the Complaints and Investigations Branch, Mass Media Bureau, certifies that she has, on this 5th day of July, 1995, sent by regular United States mail copies of the foregoing **"Mass Media Bureau's Application for Review"** to:

Ann C. Farhat, Esq.  
Bechtel & Cole  
1901 L Street, N.W.  
Suite 250  
Washington, D.C. 20036

  
Michelle C. Mebane